

Dallas W. Jolley, Jr.
Attorney & Counselor at Law
4707 So. Junett St., Suite B
Tacoma, WA 98409
Office (253) 761-8970
Fax (206) 686-7653

Counsel for Debtor in Possession

The Honorable Marc L. Barreca
Chapter 11

Hearing Date: August 3, 2012

Hearing Time: 9:30 AM

Hearing Location: Rm 7106, 700
Stewart St.,
Seattle, WA 98101

Response Date: July 27, 2012

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

In re:

VADIUM TECHNOLOGY, INC.,

Debtor.

Case No.: 12-10808-MLB

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE
STATEMENT FOR THE DEBTOR'S
CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND
VOTING PROCEDURES WITH RESPECT
TO THE DEBTOR'S CHAPTER 11 PLAN.

The above-captioned Debtor seeks an entry of an order approving (a) the
Disclosure Statement of Vadium Technology, Inc. and (b) certain procedures that will
govern solicitation and tabulation of votes to accept or reject the Plan, which are
described herein and set forth in the Disclosure Statement Order. In support of this
motion, Debtor respectfully states as follows:

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 **Jurisdiction and Venue**

2 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
3 1334.

4 2. Venue in this Court is proper pursuant to 28 U.S.C. §§1408 and 1409.

5 3. The bases for the relief requested herein are (a) sections 1123(a), 1124, 1125,
6 1126, 1128 of title 11 of the United States Bankruptcy Code, (b) Rules 2002, 3003,
7 3016, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure and (c)
8 Rules 3017-1, 3017-2, 3018-1, and 3020-1 of the Local Bankruptcy Rules for the
9 Western District of Washington.

10 **Background**

11 4. On December 29, 2011, the Debtor entered into a Letter of Intent to sell all of
12 its assets to a new company in exchange for cash and stock in the new company in
13 order to recapitalize and reorganization the Debtor and restart active operations. On
14 January 30, 2012, at the request of the Purchaser under the Letter of Intent of the
15 Debtor's Asset, the Debtor voluntarily sought protection under Chapter 11 of the
16 United States Bankruptcy Code in order to protect the asset sale and provide for an
17 orderly reorganization of the Debtor for the benefit of all of the stakeholders of the
18 Debtor.

19 **Relief Requested**

20 5. By this motion, the Debtor respectfully requests entry of an order, granting the
21 following relief:

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

- 1 a. Approving the Disclosure Statement
- 2 b. Approving the dates and deadlines for soliciting votes, voting on and
- 3 filing objections to the Plan, including the following recommended
- 4 deadline dates:
- 5 i. The Voting Record Date as August 3, 3012;
- 6 ii. The Solicitation Deadline as August 10, 2012;
- 7 iii. The Voting Deadline as August 31, 2012;
- 8 iv. The Plan Objection Deadline as August 31, 2012;
- 9 v. The Confirmation Hearing as September 7, 2012;
- 10 c. Approving the materials to be included in the Solicitation Packages,
- 11 including the following:
- 12 i. The Ballots;
- 13 ii. The Confirmation Hearing Notice; and
- 14 iii. Information on how to access the Disclosure Statement and the
- 15 Plan through the Bankruptcy Court website
- 16 d. Approving the non-Voting Status Notice
- 17 e. Approving the Solicitation and Voting Procedures; and
- 18 f. Approving notice and objection procedures for confirmation of the Plan.

19 **Basis for Relief**

20 **A. Approval of the Disclosure Statement**

21 ***(i) The Disclosure Statement Contains Adequate Information***

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 6. Pursuant to Bankruptcy Code Section 1125, the proponent of a chapter 11 plan
2 must provide holders of impaired claims and equity interests entitled to vote on the
3 plan with “adequate information” regarding the plan. Specifically, Bankruptcy Code
4 section 1125(a)(1) provides, in relevant part, as follows:

5 ‘[A]dequate information’ means information of a kind, and
6 in sufficient detail, as far as is reasonably practicable in light
7 of the nature and history of the debtor and the condition of
8 the debtor’s books and records, including a discussion of the
9 potential material Federal tax consequences of the plan to
 the Debtor, and a hypothetical investor typical of the holders
 of claims or interests in the case, that would enable such a
 hypothetical investor of the relevant class to make an
 informed judgment about the plan . . .

10 11 U.S.C. § 1125(a)(1). “Adequate information” has been interpreted as “reasonably
11 practicable” to permit “informed judgment” by impaired creditors and equity interest
12 holders entitled to vote on the plan. *See Momentum Mfg. Corp. v. Employee Creditors*
13 *Comm.* 25 F.3d 1132, 1136 (2d Cir. 1994); *see also Abel v. Shugrue (In re Ionosphere*
14 *Clubs, Inc.)*, 179 B.R. 24, 29 (Bankr. S.D.N.Y. 1995) (adequacy of a disclosure
15 statement “is to be determined on a case-specific basis under a flexible standard that
16 can promote the policy of Chapter 11 towards fair settlement through a negotiation
17 process between informed interested parties”) (internal citation omitted) . The need to
18 assess adequacy of information practically and flexibly is also underscored in the
19 legislative history of Bankruptcy Code section 1125:

20 Precisely what constitutes adequate information in any
21 particular instance will develop on a case-by-case basis.
 Courts will take a practical approach as to what is

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR’S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR’S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 necessary under the circumstances of each case, such as the
2 cost of preparation of the statements, the needs for relative
3 speed in solicitation and confirmation . . . In reorganization
cases, there is frequently great uncertainty. Therefore, the
need for flexibility is greatest.

4 H.R.Rep. 95-595, at 409 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963,
6365.

5 7. Courts have wide discretion to determine whether a disclosure statement
6 contains “adequate information” within the meaning of the Bankruptcy Code section
7 1125(a). *See Kirk v. Texaco, Inc.*, B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative
8 history could hardly be more clear in granting broad discretion to bankruptcy judges
9 under § 1125(a) . . .”). This grant of discretion is intended to permit courts to tailor the
10 disclosures made in connection with the solicitation of votes on a chapter 11 plan to
11 facilitate the effective reorganization of debtors in a broad range of businesses and
12 circumstances. *See* H.R. Rep. 595 at 408; *Texaco*, 82 B.R. at 682 (Stating that
13 bankruptcy judges have a clear congressional mandate to exercise “broad discretion in
14 their supervision of corporate reorganizations”). Accordingly, the determination of
15 whether a disclosure statement contains adequate information must be made on a case-
16 by-case basis, focusing on the unique facts and circumstances of each case. *See In re*
17 *Phoenix Petroleum Co.*, 278 B.R. 385, 393.

18 8. The Disclosure Statement reflects a summary of the Plan and, in particular, the
19 effect of the terms of the Plan on holders of Claims, holders of Equity Interests and
20 other parties in interest that would result if the Plan is confirmed and consummated.
21

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR’S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR’S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 The Disclosure Statement also contains the pertinent information necessary for holders
2 of Claims entitled to vote on the Plan to make an informed decision about whether to
3 vote to accept or reject the Plan. Specifically, the Disclosure Statement includes
4 information regarding, among other things:

- 5 a. **Executive Summary:** A summary of the Plan;
- 6 b. **The Debtor's Corporate History, Structure and Business**
7 **Overview:** An overview of the Debtor's corporate history, business
8 operations, organizational structure and prepetition capital structure;
- 9 c. **Events Leading to the Commencement of the Chapter 11 Case:** A
10 summary of the Debtor's out-of-court restructuring efforts in response
11 to deteriorating economic conditions;
- 12 d. **Initial Motions of the Chapter 11 Case:** A summary of the motions
13 filed on the petition date;
- 14 e. **Developments During the Chapter 11 Case:** A summary of the
15 material developments during the chapter 11 case.
- 16 f. **Description of the Chapter 11 Plan:** Descriptions of the treatment of
17 the Classes of Claims against and Equity Interests in the Debtor; means
18 for implementation of the Plan; provisions regarding distributions;
- 19 g. **Solicitation and Voting Procedures:** A description of the procedures
20 for soliciting votes to accept or reject the Plan and voting on the Plan;
- 21 h. **Confirmation Procedures:** Confirmation procedures and statutory
requirements for Confirmation and consummation of the Plan,
including a liquidation analysis;

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

- 1
- 2 i. **Securities Law Matters:** Bankruptcy code exemptions from
- 3 registration requirements for securities issued in reliance on Section
- 4 1145 of the Bankruptcy Code and issues related to securities transfers
- 5 of the 1145 securities;
- 6 j. **Risk Factors:** Certain risk factors that may affect the Plan, risks
- 7 associated with the Debtor's business, as well as certain risks associated
- 8 with forward-looking statements and an overall disclaimer as to the
- 9 information provided by and set forth in the Disclosure Statement;
- 10 k. **Certain U.S. Federal Income Tax Consequences of the Plan:** A
- 11 description of certain U.S. Federal Income Tax Consequences of the
- 12 Plan; and
- 13 l. **Recommendation:** A recommendation by the Debtor that the holder of
- 14 Claims in the Class entitled to vote on the Plan should vote to accept
- 15 the Plan.

16 9. Based on the foregoing, the Debtor respectfully submits that the Disclosure

17 Statement contains sufficient information for a hypothetical reasonable investor to

18 make an informed judgment about the Plan and complies with all aspects of

19 Bankruptcy Code section 1125.

20 ***(ii) The Disclosure Statement Provides Sufficient Notice of Injunction,***

21 ***Exculpation and Release Provisions in the Plan***

10. Bankruptcy Rule 3016(c) requires that, if a chapter 11 plan provides for an

injunction against conduct not otherwise enjoined under the Bankruptcy Code, the

plan and disclosure statement must describe, in specific and conspicuous language, the

acts to be enjoined and the entities subject to the injunction. See Fed. R. Bankr. P.

3016(c).

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 11. Section VIII of the Disclosure Statement describes in detail the entities subject
2 to an injunction under the Plan and the acts that they are enjoined from performing.
3 Further, the language in Article VIII of the Disclosure Statement is capitalized,
4 making it conspicuous to anyone who reads it. Thus, the Debtors respectfully submit
5 that the Disclosure Statement complies with Bankruptcy Rule 3016(c) by
6 conspicuously describing the conduct and parties enjoined by the Plan.

7 *(iii) Approval of the Disclosure Statement Hearing Notice*

8 12. Bankruptcy Rule 3017(a) requires that notice of the hearing to consider the
9 proposed disclosure statement be provided to creditors and other parties in interest.
10 See Fed. R. Bankr. P. 3017(a) (providing that after a disclosure statement is filed, it
11 must be mailed with the notice of hearing to consider the disclosure statement and any
12 objections or modifications thereto on no less than 28 days' notice thereof); Fed. R.
13 Bankr. P. 2002(b) (requiring not less than 28 days' notice by mail of the time for filing
14 objections and the hearing to consider the approval of a disclosure statement).

15 13. The Debtor will promptly serve all known creditors with a copy of the
16 Disclosure Statement Hearing Notice, which identifies: (a) the date, time and place of
17 the hearing to consider the Disclosure Statement; (b) the manner in which a copy of
18 the Disclosure Statement can be obtained; and (c) the deadline and procedures for
19 filing objections to the approval of the Disclosure Statement.

20 14. In accordance with Bankruptcy Rule 3017(a), the Debtor proposes that the
21 Disclosure Statement Hearing be scheduled no earlier than August 3, 2012. As a result,

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 the Debtor proposes to set the deadline to object to the Disclosure Statement for July
2 27, 2012. Accordingly, all parties in interest will have 28 days' notice of the deadline
3 to object to the approval of the Disclosure Statement in accordance with Bankruptcy
4 Rules 3017(a) and 2002(b). Thus, the Debtor respectfully submits that it has provided
5 adequate notice of the Disclosure Statement Hearing and requests that the Court
6 approve such notice as appropriate and in compliance with the requirements of the
7 Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

8 **B. Approval of the Materials and Timeline for Soliciting Votes on the Plan**

9 **(i) *Approval of the Form of Ballots***

10 15. The Debtor respectfully submits that that the forms of the Ballots comply with
11 Bankruptcy Rule 3018(c) and should, therefore, be approved.

12 **(ii) *Approval of the Form and Distribution of Solicitation Packages to
13 Parties Entitled to Vote on the Plan***

14 16. Bankruptcy Rule 3017(d) specifies the materials to be distributed to holders of
15 allowed claims and/or equity interests upon approval of a disclosure statement,
16 including the court-approved plan and disclosures statement and notice of the time
17 within which acceptances and rejects of the plan may be filed. *See* Fed. R. Bankr. P.
18 3017(d).

19 17. In accordance with these requirements, Debtor proposes to send the solicitation
20 materials and documents to be included in the solicitation packages listed below to
21 provide holders of claims with secured interests with the information they need to be

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 able to make informed decisions with respect to how to vote on the Plan. Each
2 Solicitation Package will include the following materials:

- 3 a. Information on how to access the Disclosure Statement through the
4 Bankruptcy Court website;
- 5 b. The notice setting forth, among other things, the date and time of the
6 hearing on confirmation of the Plan;
- 7 c. An appropriate Ballot;
- 8 d. Such other materials as the Court may direct

9 ***(iii) Approval of the Form of Notices to Non-Voting Classes***

10 18. Those not able to vote on the Plan will not receive Solicitation Packages and,
11 instead, the Debtor proposes that such parties receive an appropriate form notifying
12 such holder of its non-voting status. Specifically, in lieu of solicitation materials, the
13 Debtor proposes to provide the following to holders of Claims and Equity Interests in
14 the Non-Voting Classes and certain other parties not entitled to vote on the plan:

- 15 a. *Unimpaired Claims – Conclusively Presumed to Accept:* Holders of
16 Claims in Classes 1, 3, 4, 5, 8, 13, 14 are not Impaired under the Plan
and, therefore, are conclusively presumed to have accepted the Plan.
- 17 b. *Equity Interests – Deemed to Reject:* None are deemed to reject the
18 Plan.

19 19. Each of the Notices will explain, among other things: (a) instructions on how
20 to view or obtain copies of the Disclosure Statement (including the Plan and other
21

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 exhibits), the Disclosure Statement Order and all other materials in the Solicitation
2 Package (*excluding* the Ballots) from the Court's website via Pacer.

3 20. The Debtor believes that the mailing of Non-Voting Status Notices in lieu of
4 Solicitation Packages satisfies the requirements of Bankruptcy Rule 3017(d).
5 Accordingly, unless otherwise instructed by the Court, Debtor does not intend to
6 distribute Solicitation Packages to holders of Claims and Equity Interests in the Non-
7 Voting Classes.

8 (iv) ***Approval of the Voting Record Date, Solicitation Deadline and Voting***
9 ***Deadline***

10 21. Bankruptcy Rule 3017(d) provides that, for purposes of soliciting votes in
11 connection with the confirmation of a plan, "creditors and equity shareholders shall
12 include holders of stock, bonds, debentures, notes, and other securities of record on the
13 date the order approving the disclosure statement is entered or another date fixed by
14 the court, for cause, after notice and a hearing." Fed. R. Bankr. P. 3017(d).
15 Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the
16 record date for voting purposes. *See* Fed. R. Bankr. P. 3018(a). Further, Bankruptcy
17 Rule 3017(c) provides that before approving the disclosure statement, the bankruptcy
18 court may fix a time within which holders of claims and equity interests may accept or
19 reject the plan and may fix a date for the hearing on confirmation of the plan. *See* Fed.
20 R. Bankr. P. 3017(c).
21

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 22. The Debtor requests that the court exercise its authority under Bankruptcy
2 Rules 3017(d) and 3018(a) to establish August 3, 2012 as the date for determining: (a)
3 the holders of Claims entitled to receive Solicitation Packages; (b) the holders of
4 Claims entitled to vote or reject the Plan; and (c) whether Claims have been properly
5 transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee
6 may cast a vote to accept or reject the Plan as the holder of such Claim.

7 23. Moreover, the Debtors propose that, with respect to any transferred Claim, the
8 transferee will be entitled to receive a Solicitation Package and, if the holder of such
9 Claim is entitled to vote with respect to the Plan, cast a Ballot on account of such
10 Claim only if all actions necessary to effectuate the transfer of the Claim pursuant to
11 Bankruptcy Rule 3001(e) have been completed by the Voting Record Date. In the
12 event a Claim is transferred after the Voting Record Date, the transferee of such Claim
13 will be bound by any vote on the Plan made by the holder of such Claim as of the
14 Voting Record Date.

15 24. The Debtor requests that, after they distribute Solicitation Packages to holders
16 of Claims entitled to vote on the plan by to be mailed by August 10, 2012, the Court
17 require that all holders of Claims entitled to vote on the Plan complete, execute and
18 return their Ballots so that they are **actually received** on or before August 31, 2012.

19 25. The foregoing timing and materials will afford holders of Claims entitled to
20 vote on the Plan 21 days after service of the solicitation materials within which to
21 review and analyze such materials and subsequently make an informed decision as to

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 whether to vote to accept or reject the Plan before the Voting Deadline in a manner
2 consistent with the requirements of the applicable Bankruptcy Rules. *See* Fed. R.
3 Bankr. P. 3017(d) (after approval of a disclosure statement, the debtor must transmit
4 the plan, the approved disclosure statement, a notice of the time within which
5 acceptances and rejections of such plan may be filed and any other information that
6 the bankruptcy court may direct to certain holders of claims). Accordingly, the Debtor
7 requests that the Court approve form of, and Debtor's proposed procedures for
8 distributing, the Solicitation Packages to the holders of Claims in the Voting Class.

9 **C. Approval of the Solicitation and Voting Procedures**

10 26. Bankruptcy Code Section 1126(c) provides that:

11 A class of claims has accepted a plan if such plan has been accepted by
12 creditors, other than any entity designated under section (e) of this section, that
13 hold at least two-thirds in amount and more than one-half in number of the
allowed claims of such class held by creditors, other than any entity designated
under subsection (e) of this section, that have accepted or rejected such plan.

14 11 U.S.C. § 1126(c). Additionally, Bankruptcy Rule 3018(c) provides, in part, that
15 “[a]n acceptance or rejection [of a plan] shall be in writing, identify the plan or plans
16 accepted or rejected, be signed by the creditor or equity share holder or an authorized
17 agent, and conform to the appropriate Official Form.” Fed. R. Bankr. P. 3018(c).

18 27. The Solicitation and Voting Procedures include specific voting and tabulation
19 requirements and procedures, as follows:

20 ***(i) Completion of Ballots***

21
MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 28. To ease and clarify the process of tabulating all votes received, the Debtor
2 proposes that a Ballot be counted in determining the acceptance or rejection of the
3 Plan only if it satisfies certain criteria. Specifically, the Solicitation and Voting
4 Procedures provide that the Debtors not count a Ballot if it is, among other things,
5 illegible, submitted by a holder of a Claim that is not entitled to vote on the Plan, not
6 clearly marked to accept or reject the Plan, marked both to accept and reject the Plan,
7 or unsigned.

8 ***(ii) General Ballot Tabulation and Voting Procedures Applicable to Holders***
9 ***of Claims***

10 29. The Debtors' proposed Solicitation and Voting Procedures set forth specific
11 criteria with respect to voting procedures and the general tabulation of the Ballots.
12 The Debtor believes that the proposed Solicitation and Voting Procedures will
13 facilitate the Plan confirmation process. Specifically, the procedures will clarify the
14 obligations of each holder of a Claim entitled to vote to accept or reject the Plan and
15 will create a straightforward process by which the Debtors can determine whether they
16 have satisfied the requirements of Bankruptcy Code section 1126(c). Accordingly, the
17 Debtors submit that the Solicitation and Voting Procedures are in the best interests of
18 their estates, holders of Claims and other parties in interest, and that good cause
19 supports the relief requested herein.

20 **D. Approval of Procedures Confirming the Plan**

21 ***(i) Establishing Procedures for Notice of the Confirmation Hearing***

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 30. Bankruptcy Code section 1128 provides that a bankruptcy court will hold a
2 hearing on confirmation of a plan and provides that parties in interest may object to
3 confirmation. 11 U.S.C. § 1128. Additionally, Bankruptcy Rule 3017(c) provides that,
4 on or before approval of a disclosure statement, a bankruptcy court will fix a time for
5 the hearing on confirmation of a plan. See Fed. R. Bankr. P. 3017(c). In accordance
6 with Bankruptcy Rule 3017(c) and Bankruptcy Code section 1128, the Debtors request
7 that the Court establish September 7, 2012 at 9:30 a.m., as the date and time for the
8 hearing at which the Court will consider confirmation of the Plan.

9 31. . Bankruptcy Rules 2002(b) and (d) require no less than 28 days' notice to all
10 holders of claims and equity interests of the time fixed for filing objections to the
11 hearing on confirmation of a chapter 11 plan. To satisfy this requirement, the Debtors
12 request that the Court establish August 31, 2012 as the deadline by which objections
13 to the Plan must be filed with the Court and served so as to be actually received by the
14 appropriate notice parties. Additionally, the Debtors will serve the Confirmation
15 Hearing Notice to consider confirmation of the Plan on all known holders of Claims
16 and Equity Interests by no later than August 8, 2012 which will provide all parties in
17 interest more than 28 days' notice of (i) the Plan Objection Deadline and (ii) the
18 Confirmation Hearing. The Confirmation Hearing Notice will include, without
19 limitation: (a) instructions as to how to view or obtain copies of the Disclosure
20 Statement (including the Plan and the other exhibits thereto), the Disclosure Statement
21 Order, and all other materials in the Solicitation Package (excluding Ballots) from the

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 Claims Agent and/or the Court's website via PACER; (b) notice of the Voting
2 Deadline; (c) notice of the Plan Objection Deadline; (d) notice that the Plan includes
3 release, exculpation and injunction provisions of which parties should be aware; and
4 (e) notice of the Confirmation Hearing Date and information related thereto.

5 32. The Debtors believe that this will provide sufficient notice of, among other
6 things, the entry of the Disclosure Statement Order, the Voting Deadline, the Plan
7 Objection Deadline and the first date on which the Confirmation Hearing is scheduled
8 to parties who did not otherwise receive notice thereof by mail. Additionally, service
9 comports with the requirements of Bankruptcy Rule 2002 and should be approved.

10 (ii) ***Approval of the Procedures for Filing Objections to the Plan,***
11 ***Confirmation Brief and Debtor's Reply to Objections, if any, to the***
plan

12 33. The Debtors also request that the Court direct the manner in which parties in
13 interest may object to confirmation of the Plan. Pursuant to Bankruptcy Rule
14 3020(b)(1), objections to confirmation of a plan must be filed and served "within a
15 time fixed by the court." Fed. R. Bankr. P. 3020(b)(1). The Confirmation Hearing
16 Notice will require that objections to confirmation of the Plan or requests for
17 modifications to the Plan, if any, must:

18 (a) be in writing;

19 (b) conform to the Bankruptcy Rules, the Local Rules and any orders of this Court;

20 (c) state the name and address of the objecting party and the amount and nature of
21 the Claim or Equity Interest of such party;

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653

1 (d) state with particularity the basis and nature of any objection to the Plan and, if
2 practicable, a proposed modification to the Plan that would resolve such objection;
and

3 (e) be filed, contemporaneously with a proof of service, with the Court and served
4 so that they are actually received by the notice parties identified in the
Confirmation Hearing Notice on or before the Plan Objection Deadline.

5
6 **Non-Substantive Modifications**

7 34. The Debtors request authorization to make non-substantive changes to the
8 Disclosure Statement, the Plan, the Confirmation Hearing Notice, the Solicitation
9 Packages, the Non-Voting Status Notices, the Ballots, the Publication Notice, the
10 Voting and Solicitation Procedures and related documents without further order of this
11 Court, including, without limitation, changes to correct typographical and grammatical
12 errors and to make conforming changes to the Plan and any other materials in the
Solicitation Packages before distribution.

13 WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests
14 that this Court enter an order granting the relief requested herein.

15 DATED: July 3, 2012

16 /s/ Dallas W. Jolley, Jr.,
17 Dallas W. Jolley, Jr., WSBA No. 22957
18 Attorney for Debtors
19
20
21

MOTION FOR ENTRY OF AN ORDER (A)
APPROVING THE DISCLOSURE STATEMENT
FOR THE DEBTOR'S CHAPTER 11 PLAN AND (B)
ESTABLISHING SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO THE DEBTOR'S
CHAPTER 11 PLAN

Dallas Jolley, Jr., Attorney at Law
4707 South Junett St. Ste. B Tacoma, WA 98407
Tel: (253)761-8970 Fax: (206)686-7653